

CHRIS CLEMENTS)	
Claimant)	
VS.)	
)	Docket No. 1,012,750
BOB BERGKAMP CONSTRUCTION)	
Respondent)	
AND)	
)	
ST. PAUL MERCURY INSURANCE)	
Insurance Carrier)	

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes:

The October 9, 2003 preliminary hearing Order should be reversed. The evidence fails to establish it is more probably true than not that claimant injured his right upper extremity while working for respondent.

Claimant testified he injured his right upper extremity while working for respondent on August 13, 2003, while lifting the hood of a truck. Claimant also testified he told a supervisor about the incident the same day. Claimant did not work after August 13, 2003, as he was terminated the next day for failing to come to work and for failing to call in.

The record,¹ however, does not support claimant's claim. The supervisor who claimant allegedly told about the incident denies that claimant told him about it. In addition, the emergency room records that were created when claimant sought medical treatment on August 20, 2003, indicate claimant's symptoms began at home three days earlier from sleeping and hyperflexing his wrist. Moreover, at his attorney's request, claimant saw Dr. Edward J. Prostic. Claimant apparently failed to tell the doctor about the alleged August 13, 2003 incident at work. Dr. Prostic's August 29, 2003 letter to claimant's attorney reads, in part:

Mr. Clements was examined by me January 13, 2003 for work-related injury sustained while employed by Chase Contractors, Inc. When examined by me, he was working for H&M Construction Company as a welder. He was unable to tolerate those duties and changed employment to Bob Bergkamp Construction. Since his most recent employment, he had worsening of symptoms about his neck and right wrist. He sought attention at the emergency department of Susan B. Allen Hospital in El Dorado, KS where x-rays were taken showing loss of fixation of a fracture of his right carpal navicular. The patient has been unable to work since that time.

The patient denies distinct new traumatic incidents or new health problems.

The greater weight of the evidence does not support claimant's contentions. Accordingly, claimant's request for benefits must be denied.

¹ At the October 1, 2003 preliminary hearing, the Judge granted respondent and its insurance carrier additional time to present the depositions of several witnesses. Following those depositions, the parties submitted letters to the Judge presenting their arguments. And those letters contained additional medical records that had not been previously introduced into the record. The Judge did not mention those records in the October 9, 2003 Order. Nevertheless, as the parties did not object to those records in their briefs submitted to this Board, those records are considered part of the evidentiary record for purposes of this appeal.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.²

WHEREFORE, the Board reverses the October 9, 2003 Order and denies claimant's request for benefits.

IT IS SO ORDERED.

Dated this ____ day of December 2003.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-534a.